

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION
OPIATE LITIGATION**

**MDL No. 2804
Case No. 17-md-2804
Judge Dan Aaron Polster**

This document relates to:

Track Three Cases

**DECLARATION OF STEVEN N. HERMAN IN SUPPORT OF DEFENDANTS' MOTION
TO EXCLUDE CERTAIN OPINIONS
AND TESTIMONY OF DR. KATHERINE KEYES**

I, Steven N. Herman, declare and state as follows:

1. I am a Partner in the law firm of Zuckerman Spaeder LLP which represents the CVS Defendants in this matter. I submit this declaration in support of Defendants' Motion to Exclude Certain Opinions and Testimony of Dr. Katherine Keyes.

2. Attached as Exhibit 1 is a copy of the Track Three expert report of Katherine Keyes, PhD, dated April 16, 2021.

3. Attached as Exhibit 2 is an excerpt of the Track One expert of Katherine Keyes, PhD, dated March 25, 2019.

4. Attached as Exhibit 3 is an excerpt of the Track Two expert of Katherine Keyes, PhD, dated August 3, 2020.

5. Attached as Exhibit 4 is an excerpt of the New York Opioid Litigation (Index No. 400000/2017) expert report of Katherine Keyes, PhD, dated December 19, 2019.

6. Attached as Exhibit 5 is an excerpt from the Track Three deposition of Katherine Keyes, dated June 3, 2021.

7. Attached as Exhibit 6 is an excerpt from the Minutes of the New York Opioid Litigation (Index No. 400000/2017) *Frye* Hearing, Testimony of Dr. Keyes, dated September 10, 2020.

8. Attached as Exhibit 7 is an excerpt from the Track One deposition of Katherine Keyes, dated April 29, 2019.

9. Attached as Exhibit 8 is a copy of Judge Faber's Order in Track Two, ECF No. 1299, dated April 29, 2021.

10. Attached as Exhibit 9 is a copy of an Order in the New York Opioid Litigation (Index No. 400000/2017), NYSCEF Doc. No. 7636, dated November 12, 2020.

11. Attached as Exhibit 10 is an excerpt of an article by A. Van Zee, "The promotion and marketing of OxyContin: Commercial triumph, public health tragedy," *Am J Public Health*. 2009;99(2):221-227. doi:10.2105/AJPH.2007.131714.

12. Attached as Exhibit 11 is an article by F. Fickweiler, et al., "Interactions between physicians and the pharmaceutical industry generally and sales representatives specifically and their association with physicians' attitudes and prescribing habits: a systematic review," *BMJ Open*. 2017;7(9):e016408. doi:10.1136/bmjopen-2017-016408.

13. Attached as Exhibit 12 is an article by C. DeJong, et al., “Pharmaceutical Industry–Sponsored Meals and Physician Prescribing Patterns for Medicare Beneficiaries,” JAMA Intern Med. 2016;176(8):1114-1122. doi:10.1001/jamainternmed.2016.2765.

14. Attached as Exhibit 13 is an article by SE Hadland, et al., “Association of pharmaceutical industry marketing of opioid products to physicians with subsequent opioid prescribing,” JAMA Intern Med. 2018;178(6):861-863. doi:10.1001/jamainternmed.2018.1999.

15. Attached as Exhibit 14 is an article by JS Yeh, et al., “Association of Industry Payments to Physicians With the Prescribing of Brand-name Statins in Massachusetts,” JAMA Intern Med. 2016;176(6):763-768. doi:10.1001/jamainternmed.2016.1709.

16. Attached as Exhibit 15 is an article by SE Hadland, et al., “Industry payments to physicians for opioid products, 2013–2015,” Am J Public Health. 2017;107(9):1493-1495. doi:10.2105/AJPH.2017.303982.

17. Attached as Exhibit 16 is an article by SE Hadland, et al., “Association of pharmaceutical industry marketing of opioid products with mortality from opioid-related overdoses,” JAMA Netw. Open. 2019;2(1):e186007-e186007. doi:10.1001/jamanetworkopen.2018.6007.

18. Attached as Exhibit 17 is an article by MM Chren, et al., “Physicians’ behavior and their interactions with drug companies. A controlled study of physicians who requested additions to a hospital drug formulary,” JAMA. 1994;271(9):684-689.

19. Attached as Exhibit 18 is an article by GK Spurling, et al, “Information from pharmaceutical companies and the quality, quantity, and cost of physicians’ prescribing: a systematic review,” PLoS Med. 2010;7(10):e1000352.

20. Attached as Exhibit 19 is an article by CM Carey, et al., “Drug firms’ payments and physicians’ prescribing behavior in Medicare Part D,” published online 2017:1-55.

21. Attached as Exhibit 20 is an article by I. Larkin, et al., “Association between academic medical center pharmaceutical detailing policies and physician prescribing,” JAMA. 2017;317(17):1785-1795. doi:10.1001/jama.2017.4039.

22. Attached as Exhibit 21 is a copy of an article by the National Academies of Sciences Engineering and Medicine, “High and Rising Mortality Rates Among Working-Age Adults,” The National Academies Press; 2021. doi:10.17226/25976.

23. Attached as Exhibit 22 is an article by A. Kolodony, et al. “The Prescription Opioid and Heroin Crisis: A Public Health Approach to an Epidemic of Addiction,” Annual Rev. Public Health 2015, 36:559-74.

24. Attached as Exhibit 23 is a copy of the webpage <https://openpaymentsdata.cms.gov/about>, retrieved on July 22, 2021.

25. Attached as Exhibit 24 is an article by D. Fink, et al., “Patterns of major depression and nonmedical use of prescription opioids in the United States,” Drug Alcohol Depend, 2015 August 1; 153, doi: 10.1016.

26. Attached as Exhibit 25 is an article by Katherine Keyes, et al., “Understanding the Rural-Urban Difference in Nonmedical Prescription Opioid Use and Abuse in the United States,” *Am. J. of Public Health*, Vol. 104, no. 2, February 2014.

27. Attached as Exhibit 26 is an article by TJ Cicero, et al., “The changing face of heroin use in the United States: a retrospective analysis of the past 50 years,” *JAMA Psychiatry*. 2014;71(7):821-826. doi:10.1001/jamapsychiatry.2014.366.

28. Attached as Exhibit 27 is an article by SE Lankenau, et al., “Initiation into prescription opioid misuse among young injection drug users,” *Int J Drug Policy*, 2012;23(1):37-44. doi:10.1016/j.drugpo.2011.05.014.

29. Attached as Exhibit 28 is an article by P. Mateu-Gelabert, et al., “Injection and sexual HIV/HCV risk behaviors associated with nonmedical use of prescription opioids among young adults in New York City,” *J Subst Abuse Treat*. 2015;48(1):13-20. doi:10.1016/j.jsat.2014.07.002.

30. Attached as Exhibit 29 is an article by WM Compton, et al., “Relationship between nonmedical prescription-opioid use and heroin use,” *N Engl J Med*. 2016;374(2):154-163. doi:10.1056/NEJMra1508490.

31. Attached as Exhibit 30 is an article by PK Murhi, et al., “Associations of nonmedical pain reliever use and initiation of heroin use in the United States,” published online 2013.

32. Attached as Exhibit 31 is an article by N. Khosla, et al., “Correlates of non-medical prescription drug use among a cohort of injection drug users in Baltimore City,” *Addicted Behav*. 2011; 36(12):1282-1287, DOI:10.1016/J.ADDBEH.2011.07.046.

33. Attached as Exhibit 32 is an article by TL Gaines, et al., “Transitioning from pharmaceutical opioids: A discrete-time survival analysis of heroin initiation in suburban/exurban communities,” Drug Alcohol Depend, 2020, 213:108084, doi:10.1016/j.drugalcdep.2020.108084.

34. Attached as Exhibit 33 is a spreadsheet created by Katherine Keyes, PhD.

35. Attached as Exhibit 34 is an article by T.J. Cicero, et al., “Psychoactive substance use prior to the development of iatrogenic opioid abuse: A descriptive analysis of treatment-seeking opioid abusers,” Addictive Behavior 65 (2017) 242-244.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 23, 2021.

/s/ Steven N. Herman
Steven N. Herman